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To: [bod](#)
Cc: [Joshua Nelson](#); kkostiuk@raftelis.com; [Ron Duncan](#); [Emma Western](#); [Melanie Mow Schumacher](#); [Leslie Strohm](#); [Rate Study](#)
Subject: Serious issues with the proposed water rate adjustments
Date: Wednesday, January 10, 2024 1:40:05 PM

Dear Soquel Creek Water District Board of Directors:

At your December 19, 2023 Board meeting you unanimously accepted the Raftelis Water Rate Study Executive Summary and directed staff to proceed with the publication of the full Rate Study Report and mail the required Proposition 218 Notifications to all affected parcels in the Soquel Creek Water District. At that meeting I presented you with several aspects of the Executive Summary that run afoul of the California Constitution Article XIII D, aka Proposition 218. In crafting the Revenue Requirement (i.e., the revenue required by the rates) for the rate setting year FY 2024, Raftelis incorporated *future* estimated PWS Operations and Maintenance expenses to the tune of \$5.5 million (*italics are mine for emphasis*):

- “The project is currently in construction and *PWS operations are anticipated to commence in FY 2025*. Upon project completion the *District will begin to incur operating costs that average \$5.5 million annually... To smooth effects on rates, PWS is pre-funded in FY 2024 to help offset the shift in cost structure in FY 2025*;
- O&M includes cost centers related to ground water production, system operations, District personnel, customer service, administration, and *future Pure Water Soquel operating costs*;
- The total volume of water demanded by District Customers greater than 6 HCF is 680 AFY, which expressed in percentage terms is *45% of the 1500 AFY which the project will be delivering*. Therefore *45% of PWS costs are allocated in the form of supplemental water supply and differentiated within the water use rates*; and,
- The remaining water received from PWS (*55% of the project costs*) *represents the Basin wide sustainability benefit* for replenishment of the critically over drafted basin... Due to this type of benefit, *the proposed rates recover the Basinwide benefit from the fixed service charges* to acknowledge the proportional benefit to all customers in protecting the existing water supply from further seawater intrusion”

After hearing what I had to say, President Jaffe asked your legal counsel about the future PWS cost issue and your counsel answered: “It’s absolutely true that Prop 218 requires that fees be charged for service that is actually available...”. But you all disregarded that statement and went ahead and approved the Rate Study anyway.

The following should be familiar to all of you, because the Superior Court of Santa Cruz issued a judgement against the District for doing the very same thing! There is no way I can state this better than what Judge Paul Burdick said in his ruling:

“The court finds that Ordinance 16-01 is invalid in so far as it is utilized by the District to impose charges and collect fees for Tier II services not actually rendered and costs not actually incurred. Because the Chromium VI Treatment Plant was never built, no operation or capitalization costs have been incurred for water treatment. Consequently, the fees collected from water customers for Tier II services result in the District’s receipt of revenue when no costs or expenses are currently incurred for the claimed service. This constitutes a violation of Proposition 218 (Cal. Constitution Art. XIII D) §6 subsections (b)(1), (b)(3), and (b)(4)”.

The specific Proposition 218 substantive requirements the District violated that Judge Burdick referenced in his ruling are:

- Section 6, subsection (b) (1): *Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.*
- Section 6, subsection (b) (3): *The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of service attributable*

to the parcel.

- Section 6, subsection (b) (4): *No fee or charge may be imposed for a service unless that service is actually used or immediately available to the owner of the property. Fees or charges based on potential or future use of a service are not permitted.*

Yes, you are doing it again. PWS will not be operational in March, 2024 when you invoke the ordinance fixing rates, changes, and fees. For months you will be receiving revenue when no costs or expenses are going to be incurred for PWS supplemental water and Basinwide benefit.

Here is an even more serious issue with the Rate Study. From the 2023/24 Budget adopted June 6, 2023: "The costs to operate the advanced purified groundwater replenishment treatment plant (Pure Water Soquel) would not be a factor until the construction of the plant is completed...Projected operating costs were set at \$2.4 million for the first year of operation and increase roughly 2.5% each year thereafter". The budget confirms that the PWS O&M costs are not supposed to be a factor in the budgeting process [or the revenue requirement, aka cost of service] until construction of the plant is completed. And, yet Raftelis did it anyway. And, equally important, how was the \$5.5 million expense to operate the plant determined when the budget is indicating that the expense was "set at" \$2.4 million? "set at" is a key text because it begs the question as to whether the District has already contracted the 3rd party that will operate the plant, and has negotiated the operating expense in advance.

Finally, because PWS operating costs are a major cost component of the FY 2024 base year revenue requirement, and adjustments are required to generate additional revenue to fully recover these costs, the FY 2024 water rates and service charges will be increased by 12% annually for the years 2025, 2026, and 2027. Therefore, the cost to serve PWS supplemental water and provide the Basin wide benefit would increase to an unfathomable \$7.73 million effective 1/1/2027! That is absurd.

Further, as of today, January 10, 2024, the full Raftelis Rate Study Report that staff was directed to publish, is not on your rate study page. I see the rate calculator is there. That's good, but why is only the Executive Summary posted, not the complete report?

Please respond. Thank you,

Jon Cole